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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DENISE MURTAUGH,

Plaintiff,

v.

NATIONAL RAILROAD  
PASSENGER CORPORATION, et. al.

Defendants,

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) Case No.: 2:15-cv-09369

) **[~~PROPOSED~~] PROTECTIVE**  
) **ORDER**

) [Discovery Document: referred to  
) Mag. Judge Kenly Kiya Kato]

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,  
 3 proprietary, or private information for which special protection from public  
 4 disclosure and from use for any purpose other than prosecuting this litigation may  
 5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
 6 enter the following Stipulated Protective Order. The parties acknowledge that this  
 7 Order does not confer blanket protections on all disclosures or responses to  
 8 discovery and that the protection it affords from public disclosure and use extends  
 9 only to the limited information or items that are entitled to confidential treatment  
 10 under the applicable legal principles. The parties further acknowledge, as set forth  
 11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
 12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
 13 procedures that must be followed and the standards that will be applied when a  
 14 party seeks permission from the court to file material under seal.  
 15

16 **B. GOOD CAUSE STATEMENT**

17 Good cause exists for a Protective Order in this action because, among some  
 18 other items, Plaintiffs production of documents relating to the disciplinary records  
 19 of other current and former employees at Defendant's Union Station location.  
 20 Further, this action is likely to involve some trade secrets, some customer/  
 21 passenger lists and/or identification, other private and valuable commercial and/or  
 22 proprietary information, and identification of current or employees' names and/or  
 23 disciplinary records for which special protection from public disclosure and `from  
 24 use for any purpose other than prosecution and defense of this action is warranted.  
 25 Such confidential and proprietary materials and information consist of, among  
 26 other things, confidential business or financial information, information regarding  
 27 confidential business practices, or other confidential research, development, or  
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commercial information (including information implicating privacy rights of third parties, including but not limited to current and former employees and/or customers/passengers), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law.

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

## **2. DEFINITIONS**

2.1 Action: *Denise Murtaugh v. National Railroad Passenger Corporation*, Case No. 2:15-cv-09369-DMG-KK (C.D. California).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of

1 which to another Party or Non-Party would create a substantial risk of serious harm  
 2 that could not be avoided by less restrictive means. With respect to the  
 3 disciplinary records of Defendant's current or former employees (other than  
 4 Plaintiff Denise Murtaugh), Plaintiff's attorney, to whom the information or items  
 5 designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" are being  
 6 produced, is expressly prohibited from disclosing the information or items  
 7 designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to Plaintiff  
 8 Denise Murtaugh, Plaintiff's son (Mark Gibson), Plaintiff's daughter (Ashley  
 9 Gibson) or any other family member related to Plaintiff.  
 10

11 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as  
 12 their support staff).

13 2.6 Designating Party: a Party or Non-Party that designates information or  
 14 items that it produces in disclosures or in responses to discovery as  
 15 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."  
 16

17 2.7 Disclosure or Discovery Material: all items or information, regardless  
 18 of the medium or manner in which it is generated, stored, or maintained (including,  
 19 among other things, testimony, transcripts, and tangible things), that are produced  
 20 or generated in disclosures or responses to discovery in this matter.

21 2.8 Expert: a person with specialized knowledge or experience in a matter  
 22 pertinent to the litigation who has been retained by a Party or its counsel to serve  
 23 as an expert witness or as a consultant in this Action.

24 2.9 House Counsel: attorneys who are employees of a party to this Action.  
 25 House Counsel does not include Outside Counsel of Record or any other outside  
 26 counsel.

27 2.10 Non-Party: any natural person, partnership, corporation, association,  
 28 or other legal entity not named as a Party to this action.

1           2.11 Outside Counsel of Record: attorneys who are not employees of a  
 2 party to this Action but are retained to represent or advise a party to this Action  
 3 and have appeared in this Action on behalf of that party or are affiliated with a law  
 4 firm which has appeared on behalf of that party, and includes support staff.  
 5

6           2.12 Party: any party to this Action, including all of its officers, directors,  
 7 employees, consultants, retained experts, and Outside Counsel of Record (and their  
 8 support staffs).

9           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
 10 Discovery Material in this Action.

11           2.14 Professional Vendors: persons or entities that provide litigation  
 12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
 13 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
 14 and their employees and subcontractors.

15           2.15 Protected Material: any Disclosure or Discovery Material that is  
 16 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES  
 17 ONLY.”  
 18

19           2.16 Receiving Party: a Party that receives Disclosure or Discovery  
 20 Material from a Producing Party.

### 21 **3. SCOPE**

22           The protections conferred by this Stipulation and Order cover not only  
 23 Protected Material (as defined above), but also (1) any information copied or  
 24 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
 25 compilations of Protected Material; and (3) any testimony, conversations, or  
 26 presentations by Parties or their Counsel that might reveal Protected Material.  
 27 Any use of Protected Material at trial shall be governed by the orders of the  
 28 trial judge. This Order does not govern the use of Protected Material at trial.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations  
 3 imposed by this Order shall remain in effect until a Designating Party agrees  
 4 otherwise in writing or a court order  
 5 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal  
 6 of all claims and defenses in this Action, with or without prejudice; and (2) final  
 7 judgment herein after the completion and exhaustion of all appeals, rehearings,  
 8 remands, trials, or reviews of this Action, including the time limits for filing any  
 9 motions or applications for extension of time pursuant to applicable law.  
 10

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection  
 14 under this Order must take care to limit any such designation to specific material  
 15 that qualifies under the appropriate standards. The Designating Party must  
 16 designate for protection only those parts of material, documents, items, or oral or  
 17 written communications that qualify so that other portions of the material,  
 18 documents, items, or communications for which protection is not warranted are not  
 19 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
 20 routinized designations are prohibited. Designations that are shown to be clearly  
 21 unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily  
 22 encumber the case development process or to impose unnecessary expenses and  
 23 burdens on other parties) may expose the Designating Party to sanctions.  
 24 If it comes to a Designating Party's attention that information or items that it  
 25 designated for protection do not qualify for protection, that Designating Party must  
 26 promptly notify all other Parties that it is withdrawing the inapplicable designation.  
 27  
 28

1           5.2   Manner and Timing of Designations. Except as otherwise provided in  
 2 this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise  
 3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
 4 under this Order must be clearly so designated before the material is disclosed or  
 5 produced.  
 6

7           Designation in conformity with this Order requires:

8           (a)   for information in documentary form (*e.g.*, paper or electronic  
 9 documents, but excluding transcripts of depositions or other pretrial or trial  
 10 proceedings), that the Producing Party affix at a minimum, the legend  
 11 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 12 (hereinafter “CONFIDENTIAL legend” or “CONFIDENTIAL – ATTORNEYS’  
 13 EYES ONLY” legend), to each page that contains protected material. If only a  
 14 portion or portions of the material on a page qualifies for protection, the Producing  
 15 Party also must clearly identify the protected portion(s) (*e.g.*, by making  
 16 appropriate markings in the margins).  
 17

18           A Party or Non-Party that makes original documents available for inspection  
 19 need not designate them for protection until after the inspecting Party has indicated  
 20 which documents it would like copied and produced. During the inspection and  
 21 before the designation, all of the material made available for inspection shall be  
 22 deemed “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES  
 23 ONLY.” After the inspecting Party has identified the documents it wants copied  
 24 and produced, the Producing Party must determine which documents, or portions  
 25 thereof, qualify for protection under this Order. Then, before producing the  
 26 specified documents, the Producing Party must affix the “CONFIDENTIAL  
 27 legend” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each  
 28 page that contains Protected Material. If only a portion or portions of the material

on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 *et seq.*

6.3 The burden of persuasion in any such challenge proceeding shall be on the Non-Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on



other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to those identified under (a) through (i) as immediately listed below and a Receiving Party may disclose any information or item designated "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to those identified under (a) through (g) and (i) as immediately listed below:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

## **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this Action as  
 2 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that  
 3 Party must:  
 4

5 (a) promptly notify in writing the Designating Party. Such notification  
 6 shall include a copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or order  
 8 to issue in the other litigation that some or all of the material covered by the  
 9 subpoena or order is subject to this Protective Order. Such notification shall  
 10 include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be  
 12 pursued by the Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with  
 14 the subpoena or court order shall not produce any information designated in this  
 15 action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES  
 16 ONLY” before a determination by the court from which the subpoena or order  
 17 issued, unless the Party has obtained the Designating Party’s permission. The  
 18 Designating Party shall bear the burden and expense of seeking protection in that  
 19 court of its confidential material and nothing in these provisions should be  
 20 construed as authorizing or encouraging a Receiving Party in this Action to  
 21 disobey a lawful directive from another court.  
 22

23 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
 24 **PRODUCED IN THIS LITIGATION**

25 (a) The terms of this Order are applicable to information produced by a  
 26 Non-Party in this Action and designated as “CONFIDENTIAL” or  
 27 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information  
 28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be  
 2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
 4 produce a Non-Party's confidential information in its possession, and the Party is  
 5 subject to an agreement with the Non-Party not to produce the Non-Party's  
 6 confidential information, then the Party shall:  
 7

8 (1) promptly notify in writing the Requesting Party and the Non-  
 9 Party that some or all of the information requested is subject to a confidentiality  
 10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated  
 12 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
 13 specific description of the information requested; and

14 (3) make the information requested available for inspection by the  
 15 Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court within  
 17 14 days of receiving the notice and accompanying information, the Receiving  
 18 Party may produce the Non-Party's confidential information responsive to the  
 19 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
 20 Party shall not produce any information in its possession or control that is subject  
 21 to the confidentiality agreement with the Non-Party before a determination by the  
 22 court. Absent a court order to the contrary, the Non-Party shall bear the burden  
 23 and expense of seeking protection in this court of its Protected Material.

## 24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has  
 26 disclosed Protected Material to any person or in any circumstance not authorized  
 27 under this Stipulated Protective Order, the Receiving Party must immediately  
 28

(a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

# **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

## **12. MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective

Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

### 13. **FINAL DISPOSITION**

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4

1 (DURATION).

2 14. Any violation of this Order may be punished by any and all appropriate  
3 measures including, without limitation, contempt proceedings and/or monetary  
4 sanctions.  
5

6 **IT IS SO ORDERED.**

7 Dated: May 17, 2016  
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10 By: \_\_\_\_\_  
11 Kenly Kiya Kato, U . S. Magistrate Judge  
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EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that  
 was issued by the United States District Court for the Central District of California  
 on [date] in the case of *Denise Murtaugh v. National Railroad Passenger*  
*Corporation*, Case No. 2:15-cv-09369-DMG-KK . I agree to comply with and to  
 be bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose  
 in any manner any information or item that is subject to this Stipulated Protective  
 Order to any person or entity except in strict compliance with the provisions of this  
 Order.

I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing the terms  
 of this Stipulated Protective Order, even if such enforcement proceedings occur  
 after termination of this action. I hereby appoint \_\_\_\_\_  
 [print or type full name] of \_\_\_\_\_ [print  
 or type full address and telephone number] as my California agent for service of  
 process in connection with this action or any proceedings related to enforcement of  
 this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_